

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice
5 LESLIE M. HILL (D.C. Bar No. 476008)
6 leslie.hill@usdoj.gov
7 Environmental Defense Section
8 601 D Street N.W., Suite 8000
9 Washington D.C. 20004
10 Telephone (202) 514-0375
11 Facsimile (202) 514-8865

12 ROBERT UKEILEY
13 Admitted *Pro Hac Vice*
14 Law Office of Robert Ukeiley
15 255 Mountain Meadow Road
16 Boulder, CO 80302
17 Tel. 720-232-7247
18 rukeiley@igc.org

19 ANDREA ISSOD (Cal. Bar No. 230920)
20 Sierra Club
21 85 Second Street, 2nd Floor
22 San Francisco, CA 94105
23 Telephone (415) 977-5544
24 andrea.issod@sierraclub.org

25 *Counsel for Sierra Club*

26
27 **IN THE UNITED STATES DISTRICT COURT
28 FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

29 SIERRA CLUB,

30 Plaintiff,

31 v.

32 GINA McCARTHY, Administrator of the
33 United States Environmental Protection
34 Agency,

35 Defendant.

36 Case No.: 3:12-cv-06472-CRB

37 **JOINT STATUS REPORT**

1 On March 29, 2013, the Court stayed “[a]ll proceedings in this matter . . . until the
 2 Supreme Court issues a opinion or otherwise terminates review” in EME Homer City
 3 Generation, L.P. v. Environmental Protection Agency, 696 F.3d 7 (D.C. Cir. 2012) (Dkt.
 4 No. 29). The Supreme Court issued an opinion in that case on April 29, 2014.
 5 Environmental Protection Agency v. EME Homer City Generation, L.P., 134 S.Ct. 1584
 6 (2014). On May 14, 2014, the Court stayed proceedings for an additional 60 days to
 7 allow the parties to evaluate the impact of that opinion (Dkt. No. 31). On August 7,
 8 2014, the parties filed a joint status report (Dkt. No. 32). On August 11, 2014, pursuant
 9 to a stipulation, the Court continued the stay of this case until November 15, 2014 (Dkt.
 10 No. 33). In the same order, the Court ordered the parties to submit a joint status report by
 11 September 15, 2014. Therefore, the Parties are filing this status report pursuant to the
 12 Court’s August 11, 2014 order.

13 The parties have engaged in settlement discussions. The parties have reached a
 14 tentative agreement on a number of the deadlines at issue in the matter. As to the
 15 remaining deadlines, Sierra Club is awaiting additional information from Defendant. If
 16 the parties are able to reach tentative agreement on all the deadlines, the parties will work
 17 to memorialize their agreement in a proposed Consent Decree. Counsel will then submit
 18 the proposed Consent Decree to their respective parties for final approval. Approval of
 19 the settlement on behalf of Defendant requires review by the appropriate officials of the
 20 U.S. Environmental Protection Agency (“EPA”) and the U.S. Department of Justice as
 21 well as compliance with 42 U.S.C. § 7413(g). Approval of the settlement on behalf of
 22 Plaintiff requires review and approval by multiple people in Sierra Club, some of whom
 23 are volunteers.

24 Upon approval of the parties, Defendant Gina McCarthy, Administrator of the
 25 EPA, will lodge a proposed Consent Decree with the Court. The proposed consent
 26 decree should not be signed or entered by the Court at that time. Pursuant to section
 27 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the Consent Decree is not final and
 28 cannot be entered by the Court until the EPA Administrator provides “a reasonable

1 opportunity by notice in the Federal Register to persons who are not named as parties or
2 intervenors to the action" to comment in writing upon the proposed decree. After a
3 reasonable public comment period, the EPA Administrator and the Attorney General, as
4 appropriate, must promptly consider any written comments received. Id. If the federal
5 government elects not to withdraw or withhold consent to the proposed Consent Decree,
6 EPA will promptly file a motion requesting that the Court enter the Consent Decree.

7 Accordingly, the Parties request that the Court leave the current stay in place.
8 The parties will submit another joint status report on October 13, 2014 to advise the
9 Court of their progress in resolving this case without further litigation or Sierra Club will
10 request a briefing schedule if it appears that a settlement cannot be reached.

11
12 Respectfully submitted,

13
14 /s/ Robert Ukeiley
15 ROBERT UKEILEY
16 Admitted Pro Hac Vice
17 Law Office of Robert Ukeiley
18 255 Mountain Meadow Road
19 Boulder, CO 80302
20 Tel. 303-442-4033
21 rukeiley@igc.org

22
23 ANDREA ISSOD (Cal. Bar No. 230920)
24 Sierra Club
25 85 Second Street, 2nd Floor
26 San Francisco, CA 94105
27 Telephone (415) 977-5544
28 Facsimile (415) 977-5793
andrea.issod@sierraclub.org

29
30 *Attorneys for Plaintiff*

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment and Natural Resources
Division

4 /s/Leslie M. Hill (email authorization 9/15/14)

5 LESLIE M. HILL (D.C. Bar No. 476008)
6 U.S. Department of Justice
7 Environment & Natural Resources Division
8 Environmental Defense Section
9 601 D Street N.W., Suite 8000
10 Washington D.C. 20004
11 leslie.hill@usdoj.gov
12 Telephone (202) 514-0375
13 Facsimile (202) 514-8865

14 *Attorneys for Defendant*

15 Dated: September 15, 2015

16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

The parties shall submit a joint status report by October 13, 2014.

DATED this 39th day of September, 2014.

A circular seal of the United States District Court, Northern District of California. The outer ring is black with the words "UNITED STATES DISTRICT COURT" at the top and "NORTHERN DISTRICT OF CALIFORNIA" at the bottom. The inner rectangle is red with the words "IT IS SO ORDERED" at the top and "Judge Charles R. Breyer" at the bottom. A blue signature of "B" is written across the "IT IS SO ORDERED" text.